102D CONGRESS 2d Session | HOUSE OF REPRESENTATIVES | REPORT 102-430

TELEPHONE DISCLOSURE AND DISPUTE RESOLUTION ACT

FEBRUARY 5, 1992.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. DINGELL, from the Committee on Energy and Commerce, submitted the following

REPORT

[To accompany H.R. 3490]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 3490) to protect the public interest and the future development of interstate pay-per-call technology by providing for the regulation and oversight of the applications and growth of the pay-per-call industry, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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Purpose and Summary

The purpose of the bill (H.R. 3490) is to protect the public interest and the future development of interstate pay-per-call (also known as audiotext) technology by providing for the regulation and oversight of the applications and growth of the pay-per-call industry. The use of pay-per-call services, most commonly through the use of 900 numbers, has grown exponentially in the past few years. The 900 number payment mechanism is convenient to consumers, cost-effective to vendors, and profitable to communications common carriers. The activities of the pay-per-call industry are outside the reach of individual states, because of its interstate nature, and therefore require Federal regulatory treatment to protect the public interest. The lack of nationally uniform regulatory guidelines has led to confusion for consumers, industry, and state regulatory authorities as to the rights of consumers and the oversight authority of regulatory agencies with respect to the pay-per-call industry.

Specifically, Title I of H.R. 3490 directs the Federal Communications Commission (FCC) to complete a rulemaking that requires a consumer of audiotext services to receive adequate and clear descriptions of the rights of callers; defines the obligations of common carriers with respect to the provision of the audiotext services; includes requirements on such carriers to protect against abusive practices by providers of audiotext services; prohibits customers from being disconnected from local exchange services for refusal to pay for audiotext services; and identifies procedures by which common carriers and providers of audiotext services may take affirmative steps to protect against nonpayment of legitimate charges.

Title II directs the Federal Trade Commission (FTC) to prescribe rules for any advertisement of services or products procured through the use of pay-per-call technology. Such rules will include requirements for the disclosure of the cost of such calls, odds disclosure for contests or promotions, parental consent warnings for advertisements targeted to children, and the prohibition of the use of electronic tones that would automatically dial a pay-per-call telephone number.

Title III provides telephone service billing and collection procedures to resolve disputes for customers of a pay-per-call transaction.

Background and Need for the Legislation

Pay-per-call services (also known as audiotext or "900" services) are offered nationwide over the facilities of interexchange companies such as MCI, AT&T, US Sprint, and Telesphere. The caller dials a 10 digit number, which includes a "900" prefix, and the call is routed to an audiotext center. These centers are most often computers programmed to provide a specific service, usually to play a prerecorded message.

Using Automatic Number Identification (ANI), the telephone network can identify where a call originated for billing purposes. The consumer's local telephone bill contains the charges for the 900 service. When payment is received, the charges for the use of lines and switching facilities and other network charges are deducted; the remaining amount is paid to the 900 service provider. Local and some interexchange telephone companies are regulated, so there is a limit to the amount they can charge for the use of their facilities. However, the charges by the 900 service providers are not regulated; they simply receive the amount remaining once the carriers' costs are deducted.

There are several types of 900 service offerings. The two most common are passive and interactive. A passive service is one in which the caller merely listens to a prerecorded or live message. Interactive services are those in which the caller is transferred to a live operator or is directed by a voice processor to make choices by using the dial of a touch-tone telephone.

HISTORY OF 900 SERVICES

The first 900 service was introduced by AT&T in 1980. The initial service, called "Dial-It 900," was technologically limited. It was a passive service; the only thing a caller could do was listen to a prerecorded message. If a caller was connected to the service in the middle of a message, he or she had to wait until the message was completed to hear the beginning.

Later improvements followed with functions that included a polling service used during the Carter-Reagan television debates and a capability to listen in to the cockpit of early space shuttle flights.

900 SERVICES TODAY

Advances in technology have significantly enhanced the capabilities of 900 service offerings. Most applications are termed "infotainment"—services driven by information or interactive games for entertainment purposes. In the not too distant future, many industry experts believe that large corporations will utilize the service extensively, in conjunction with or in lieu of 800 services, as a tool for market research, merchandising, and customer applications.

Today, sophisticated interactive audiotext services are possible, including menu-driven programs that enable the consumer to choose from a variety of programming or voting possibilities with the use of a touch-tone telephone. Audiotext services also have been employed as a fund-raising mechanism by a variety of organizations—from political campaigns to charitable organizations to the Public Broadcasting Service. Technological advances continue to improve service offerings; AT&T and US Sprint have plans to utilize "voice commands" as a voice recognition system for audiotext services.

The pay-per-call industry has grown at a rapid rate in the past few years. According to "Comment of the Staff of the Bureaus of Economics and Consumer Protection of the Federal Trade Commission" ("FTC Comment") (July 2, 1991) to the Federal Communications Commission (CC Docket No. 91-65), the number of information providers for caller-paid information services has increased from 233 in 1988 to approximately 14,000 as of April 24, 1991.

In "The 900 Report, Findings and Preliminary Recommendations" ("The 900 Report") (March 1991), a working group of nine State Attorneys General projected that the pay-per-call industry would continue to grow rapidly, "from its current status as an approximately $750 million industry to a $1.6 billion industry by 1992."

There are a number of reasons for this rapid growth. Pay-per-call services offer consumers a convenient, efficient mechanism for the purchase of goods and services through the use of the telephone. According to the FCC's most recent data, 93.3% of all households have telephone service. As a result, consumers enjoy widespread and unrestricted ability and opportunity to undertake pay-per-call transactions. Also, an unanticipated—or at least at the time under-appreciated—result of the divestiture of AT&T was the ability of the pay-per-call industry to use the telephone bill payment mechanism created as a result of the Consent Decree to channel telephone charges from a pay-per-call vendor, through an interexchange carrier with a contractual relationship with that vendor, to a local exchange carrier, and ultimately onto the telephone bill of the consumer. The unique access to telephone subscribers, ease of billing, and lack of high start-up costs for vendors has produced a market with extremely low barriers to entry.

The growth of non-deceptive uses of pay-per-call technology has been beneficial to consumers. Legitimate users of this technology offer consumers a new method of purchasing goods and services that is both convenient and instantaneous. However, because of its low barriers to entry and ability to piggyback on the telephone industry's billing system, the pay-per-call industry has also attracted the attention of unscrupulous marketers. In the words of the Attorneys General Working Group, "The 900 pay-per-call service has emerged as one of the most significant vehicles for consumer fraud in recent history."

Fraudulent pay-per-call vendors can charge consumers exorbitant rates for a shoddy good or a useless service. Furthermore, in many cases the consumer does not realize the extent of the cost of the service until he or she receives the telephone bill. Few pay-per-call services identify themselves with sufficient information to permit consumers to complain or take action. Frequently, pay-per-call operators target audiences that are frequently unable to understand the costs involved, or are particularly vulnerable to their claims—children, the undereducated, and the unemployed. Problems are more prevalent than the industry admits; last year the Texas Attorney General's Office received 183 consumer complaints about audiotext services. These complaints represent claims for substantial sums of money. One injunction by the Chief Postal Inspector against a 900 number sweepstakes involved the seizure of $1.7 million in fees.

According to the testimony of Joselle Albract, a Texas Assistant Attorney General, there are several types of audiotext service fraud that occur in today's market. One major problem is deceptive price advertisements. Television advertisements for 900 number services often mention or display a price at the end of the commercial when it is rushed, barely audible, or difficult to read on the television screen. Print ads for 900 services obscure the price of the call or hide the actual price. Some print ads use words, not numbers, to give the price of the call. The price is often worded so as to lead consumers to think they will pay a flat rate, rather than a per minute rate, for a call.

Consumers of 900 services also complain that, because the 900 services are charged on a per-minute basis, the recordings are often unnecessarily long and full of useless information. Some services last for several minutes only to tell the consumer to call a second 900 number for the necessary information. Ms. Albract cited a case of advertisements for a 900 service that provided information on automobile auctions. The advertised price of the call was two dollars a minute. However, the recording lasted 13 minutes, and at the end the customer was directed to call a second 900 number. The second call cost $26, and gave order information for a catalog on automobile auctions that cost $99.

As noted above, 900 services are often directed toward young children or minors. Young children are easily attracted to promotions that promise conversations with Santa Claus or popular cartoon, television, or movie characters. Ms. Albract cited a woman in Texas who complained to the Attorney General about a television advertisement for a 900 number for children to call and speak to the Easter Bunny. Her children had to listen to the entire recording when they called in the middle of the story, incurring telephone charges at a rate of $2 per minute. Although the children repeatedly left their names and addresses in order to receive a promised "free Easter basket," they never received a thing.

Sweepstakes, games, and contests are a common form of entertainment offered through 900 numbers. However, several of these services may violate local and state lottery laws. Many states have laws requiring that sweepstakes can be entered free of charge. However, sweepstakes entered by dialing a 900 number involve a payment of consideration (the charge for the call) for the chance to win a prize. Some 900 service providers attempt to get around these laws by enclosing a mail-in option in their advertisements; this option, however, often means that a contestant must wait 12 weeks or more to hear if he or she is a winner. This waiting period has the effect of encouraging contestants to call the 900 number instead.

Sometimes the promise of a "prize" is used to lure consumers into making a 900 telephone call just to listen to a lengthy sales promotion, and the prize is often a coupon to purchase some overpriced item or a luxury vacation that requires the "winner" to bear a majority, if not all, of the cost. A common ruse involves a computer that dials a home number with the "good news" that the resident has won a vacation and must dial a 900 number to claim the prize. However, these trips often do not include airfare, meals, and other necessary expenses. These services are successful scams because the "service" provider gets money from the call regardless of whether the consumer falls for the scam. One complaint Ms. Albract cited involved just such a computer call that was answered by an 11-year-old girl. She started dialing the 900 number while telling her parents they had won a vacation. Her parents ordered her to hang up, which she did, but Telesphere still billed the family for $24.95, the cost of a one minute call. The family complained, but Telesphere did not remove the charge, suggesting the parents had to take responsibility for the child's behavior.

Some services promise to provide credit cards or job listings if a 900 number is dialed. These are targeted to low income consumers who may have difficulty obtaining credit or finding jobs. These "credit cards," however, often require a deposit equal to the credit limit, or may require that the consumer purchase a significant amount of merchandise from a particular catalog. The service may charge a fee for an application form that is available elsewhere for free. Meanwhile, the job hotlines advertised often give lists of high paying jobs that do not exist, or lists of agency names and telephone numbers that are available through the yellow pages and do not necessarily have job openings.

Clearly, these "services" are designed to get consumers to pick up the telephone and call the 900 service. Often these are the people who cannot afford to pay 900 call charges. Most consumers are not aware that recourse is available for them to help deal with these huge telephone bills. Irwin Popowsky, who testified on behalf of the National Association of State Utility Consumer Advocates and the Pennsylvania Office of Consumer Advocates, related a story of a couple whose disabled adult son entered several television quiz programs by dialing 900 numbers and incurred over $8,000 in phone charges. Although he was under the impression he had won several times, he never received any of the prizes. This case was brought to Mr. Popowsky's attention by a finance company where the couple had gone to take out a second mortgage on their home to pay the bill.

Some state public utility commissions forbid local telephone companies from disconnecting service because of outstanding payments for 900 number services, and some local telephone companies have adopted similar policies on their own. However, most people believe basic telephone service will be discontinued for failure to pay 900 service charges. And while some states regulate the provision of 900 services, these regulations are inconsistent and do not protect consumers who call an interstate 900 number. This confusion is compounded by a general lack of information available to consumers about their rights and protections regarding 900 number services.

Some argue that "call blocking" could ruin the 900 number service industry, comparing it to the similar but generally intrastate 976 industry, the revenues of which have plummeted as a result of blocking. Although 900 services can provide a valuable service in the information economy, it is clear that some unscrupulous companies will utilize 900 services as a way to make easy money. For this reason, some guidelines and safeguards must be established that will permit the industry to flourish, while preventing the use of this technology to deceive and mislead consumers.

According to the written testimony of Barry Cutler, Director of the FTC's Bureau of Consumer Protection, "The Commission also views abuses in the 900-industry as a very serious problem for consumers." The FTC Comment submitted to the FCC included an analysis of the complaints received by the FTC. These complaints were broken down into three general areas: (1) Failure to provide cost information; (2) failure to deliver goods or services promised; and (3) unauthorized calls, including those made by minors. H.R. 3490 addresses all three areas of consumer concern.

The Attorneys General Working Group made five recommendations for legislation and regulation:

(1) Advertisements and promotions for 900 numbers should be required to meet specific disclosure standards.

(2) Strict standards should apply to 900 programs and promotions directed toward children.

(3) A determination whether long distance and local exchange carriers should provide billing and collection services for certain types of 900 number offers.

(4) Audiotext programs should contain price advisements, material disclosures, and other consumer safeguards.

(5) Consumer protection safety measures must be adopted by long distance and local exchange carriers, including the establishment of * * * "procedures for 900 number billing disputes similar to the rules mandated for credit sales under the Fair Credit Billing Act."

With the exception of the recommendation that concerns the question of whether carriers should provide billing services for certain types of 900 offers, H.R. 3490 has addressed all these concerns. The bill does not exclude any types of pay-per-call offerings, but does impose special obligations on pay-per-call offerings to children, and on contests, game lines, and sweepstakes.

The FTC has also expressed concern about the lack of a dispute resolution mechanism for consumers in a pay-per-call transaction. According to Mr. Cutler:

> There are neither standard billing dispute procedures nor any guarantees that local phone companies will investigate disputed charges. Consumers who dispute charges for 900-number calls must rely on the varying policies of the local phone companies. The absence of dispute resolution protections in the collection of 900-number charges stands in stark contrast to the self-help remedies available for credit card transactions.

The National Consumers League—which administers the Alliance Against Fraud in Telemarketing, a coalition of over 80 industry representatives and regulatory agencies—stated:

> We are beginning to see evidence of increasing consumer complaints due to independent collection efforts being pursued by service bureaus and information providers after charges have been removed by a local exchange or long distance carrier. The confusion which this creates—let alone the suffering and humiliation—is reason enough to provide a uniform procedure for handling disputes arising out of these charges.

The legislation addresses this concern through limitations on collection efforts for disputed charges while an attempt to resolve the dispute is in progress.

Hearings

The Committee's Subcommittee on Telecommunications and Finance held one day of hearings on H.R. 328, a similar bill, on February 26, 1991. Testimony was received from eleven witnesses, representing eleven organizations, with additional material submitted by three individuals and organizations.

On May 9, 1991, the Committee's Subcommittee on Transportation and Hazardous Materials held a legislative hearing on draft legislation dealing with fraud and consumer abuse in the telemarketing industry and the pay-per-call industry. Testimony was received from nine witnesses representing nine organizations, with additional materials received from two organizations.

Committee Consideration

On May 8, 1991, the Subcommittee on Telecommunications and Finance met in an open session and ordered reported a Committee Print later introduced as H.R. 2330. The measure passed by a voice vote, a quorum being present.

On August 1, 1991, the Subcommittee on Transportation and Hazardous Materials met in open session and ordered reported the bill H.R. 2829, by a voice vote, a quorum being present.

On October 8, 1991, the Committee met in open session and ordered reported H.R. 3490, a clean bill amalgamating H.R. 2330 and H.R. 2829, by a voice vote, a quorum being present.

Committee Oversight Findings

Pursuant to clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Subcommittees have held oversight hearings and made findings that are reflected in this legislative report.

Committee on Government Operations

Pursuant to clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives, no oversight findings have been submitted to the Committee by the Committee on Government Operations.

U.S. Congress,
Congressional Budget Office,
Washington, DC, November 19, 1991.

Hon. John D. Dingell,
Chairman, Committee on Energy and Commerce,
House of Representatives, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has reviewed H.R. 3490, the Telephone Disclosure and Dispute Resolution Act, as ordered reported by the House Committee on Energy and Commerce on October 8, 1991. CBO estimates that implementation of H.R. 3490 would cost the federal government about $700,000 over the next five years, assuming appropriation of the necessary amounts. Enactment of H.R. 3490 would not affect direct spending or receipts. Therefore, pay-as-you-go procedures would not apply to the bill.

H.R. 3490 would require the Federal Communications Commission (FCC) to promulgate regulations governing pay-per-call (900 number) services. The bill would require the Federal Trade Commission (FTC) to prescribe regulations governing advertising of products or services obtained through the use of a 900 number. H.R. 3490 also would establish certain protected rights of customers of telephone-billed services with regard to billing disputes. Finally, the bill would require a number of studies and reports. CBO estimates that the costs of implementing the bill would be about $200,000 in fiscal year 1992 and decreasing amounts in subsequent years. The costs would be mostly for personnel costs associated with rulemaking and enforcement.

The bill, which provides for federal jurisdiction of civil suits brought by state attorneys general, also could result in some increased costs to the federal judiciary. However, any such costs are not likely to be significant.

Enactment of H.R. 3490 would result in no cost to state or local governments.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is John Webb, who can be reached at 226-2860.

Sincerely,

ROBERT D. REISCHAUER,
Director.

COMMITTEE COST ESTIMATE

In compliance with clause 7(a) of rule XIII of the Rules of the House of Representatives, the Committee believes that the cost incurred in carrying out H.R. 3490 would be $700,000 over the next five fiscal years.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee makes the following statement with regard to the inflationary impact of the reported bill: H.R. 3490 will have no inflationary impact.

SECTION-BY-SECTION ANALYSIS

Section 1: Contains the short title and legislative findings.

TITLE I—FCC PROVISIONS

Section 101 amends the Communications Act of 1934 to include a new section 227, to provide for the regulation of audiotext services.

The purposes of this new provision, as outlined in section 227(a), are (1) to put into effect a system of national regulation and review of the audiotext business, and (2) to give the Federal Communications Commission (FCC) the authority to prescribe regulations and enforcement procedures and conduct oversight to protect consumers. Audiotext services are inherently an interstate service, and nationwide uniform guidelines and enforcement are necessary to protect consumers inasmuch as no individual State can address the problems created by this industry.

Section 227(b)(1) requires the Commission to complete a rulemaking that establishes a system of oversight and regulation for audiotext services. This paragraph section stipulates that the Commission's regulations must provide consumers with adequate and clear descriptions of the rights of the caller and define the obligations of common carriers. The regulations also must include requirements on such carriers to protect consumers against abusive practices by audiotext providers. The Commission's regulations must prohibit local exchange carriers from disconnecting subscribers for refusal to pay for audiotext services.

Finally, the Commission's rules must identify procedures by which common carriers and audiotext providers may take affirmative steps to collect payment for legitimate charges, such as blocking access to 900 services.

The Committee found instances in which consumers were charged exorbitant sums for audiotext services from abusive or fraudulent providers, and then faced the threat of having basic telephone service disconnected for nonpayment. Section 227(b) will ensure that basic telephone service will not be disconnected for nonpayment of audiotext charges.

Section 227(b)(2) establishes minimum standards for any common carrier offering audiotext services of any provider. Audiotext services are required to include an introductory message, or preamble, which must include information specifying clearly the total cost or the cost per minute and any other fees for that service. The preamble message also must describe the service being offered and must inform the caller of the opportunity to hang up at the end of the introductory message without incurring any charge.

The Committee strongly believes that callers should have the opportunity to hang up at the end of the introductory message, and should be informed clearly of this right and given adequate time to exercise it. The Committee expects the Commission to impose guidelines for the industry on the wording of this preamble message in order to ensure that consumers are clearly informed of their right to avoid charges for the call if they hang up during a time sufficient to exercise this right.

Finally, the preamble message must include notice to callers that parental consent is required for calls made by children. The Committee record includes numerous examples of large audiotext charges run up on the phone bills of residential subscribers by minors. In the final analysis, a parental consent notice is necessary because whether the caller is an 8 year old or a 17 year old, generally, it is the parent who pays the bill and often does not realize that charges are being incurred until the phone bill arrives at the end of the month.

The Committee opted to include a parental consent notice in the preamble for all audiotext services, rather than merely those "directed at children," because of the difficulty of determining which programs were primarily directed at children as opposed to a general audience, and because minors frequently utilize audiotext services that were not specifically directed at children. For example, a service that advertises a message from the Easter Bunny might clearly be considered "directed at children," whereas a sports line, which might not necessarily be directed specifically at a children's audience, might receive numerous calls from callers under 18 years of age.

Section 227(b)(2) also includes a requirement that any "bypass mechanism" be disabled after the institution of a price increase. A bypass mechanism is one which avails frequent callers of the opportunity to avoid listening to the preamble message. The disabling of the bypass mechanism is necessary so that all consumers, including those who call frequently, are made aware of price increases. The bypass mechanism must be disabled for a period of time sufficient for such callers to become aware of the change.

This paragraph also requires that the service provider cease to assess charges immediately upon disconnection by the caller.

Section 227(b)(2) also requires that an appropriate and clear signal be included during live interactive group programs. Because such services often bill customers on a time-sensitive basis, and because customers are actively involved in the program, they may lose track of time. Such a signal serves to alert callers to the passage of time. Such a tone would not be required for audiotext programs for which the caller is required to preregister or presubscribe. Such services are typically business oriented; for example, executives may use 900 technology to hold conference calls or to participate in "roundtable" discussions by telephone. They are frequently scheduled in advance and typically occur on one day during a specified time frame. Because potential callers must register in advance of the date on which the program will be available, the need to alert such callers to the passage of time is significantly less than for those programs where no preregistration is necessary and where the caller is typically an "impulse caller."

This paragraph also requires common carriers to adhere to any other additional standards or obligations required by the Federal Communications Commission to prevent abusive practices.

Section 227(b)(3) mandates that common carriers offering audiotext services to require compliance by an audiotext provider with the regulations established by the Commission through contract or tariff, and to terminate the offerings of an audiotext service if that provider does not comply with those regulations. In addition, the legislation requires that callers not be billed for services found to be in violation of the FCC's regulations or under other additional circumstances determined by the FCC. For instance, a caller should not be billed for a program that does not contain a preamble message or does not inform callers of their ability to disconnect, and cannot be charged until after the opportunity to disconnect has passed and the charges for the call begin to accrue.

Common carriers offering audiotext services must establish a local or toll free number to answer questions and provide information for consumers. The Committee found that it was often difficult for consumers to contact the audiotext provider, since such providers are accessed and billed through common carriers. Consumers must have the ability to use this local or toll free number to obtain the name and mailing address of any provider of audiotext services carried by the common carrier. In short, this number is needed to facilitate consumer inquiries regarding audiotext charges that appear on their bill.

Common carriers offering audiotext services must inform all of their subscribers, all new subscribers, and all subscribers requesting service at a new location, of their rights and obligations with respect to audiotext services. Such information must be provided in clear, standard English, or other languages as specified by regulation. This notice to subscribers is required within 60 days after the issuance of final regulations by the Commission. The information required by this provision may be provided by interexchange carriers either directly, or indirectly through contract with the local exchange carriers that provide billing and collection services to the interexchange carrier. The information must include a description of any nonpayment option prescribed by the FCC, as well as the availability of the applicable blocking option, under which subscribers can have access to audiotext services blocked. The information must also provide a description of live interactive programming and discuss the callers' rights and obligations with regard to use of audiotext services and payment for such services.

Section 227(b)(3) also requires that charges for audiotext services must appear on the consumer's bill separately from local telephone charges and from any long distance telephone charges. This separated section of the consumer's bill must also include the local or toll free number described earlier.

Common carriers are required to notify, in writing, the State regulatory commission of any State in which the carrier intends to offer autiotext services of such intention. This notification must include a description of the service to be offered to users within that State as well as a list of the carrier's policies and procedures.

Common carriers also must make available to the State regulatory commissions, upon request, a list of audiotext telephone numbers accessible by consumers within that State through such carrier. This list must include the name, business address, and business telephone number of the audiotext providers.

Common carriers also must obtain from any audiotext provider soliciting charitable contributions proof of the tax exempt status of any person or organization for which contributions are solicited.

Section 227(b)(4) requires that local exchange carriers carrying audiotext services must offer their telephone subscribers the option to block access to all audiotext services from their telephone. This would not be required where such blocking is not technologically feasible. This subsection further mandates that the costs of such blocking may not be recovered from local or long distance ratepayers, although they may be recovered by contract or tariff. Telephone subscribers requesting the implementation of the blocking option will not be charged for such option for a reasonable and appropriate period of time (established by the FCC) after the effective date of the Commission's regulations, after an initial connection, or after subscription for any new telephone line.

The Committee found that a number of audiotext services are offered at nominal charges and last a very short period of time in duration. Accordingly, Section 227(b)(5) permits audiotext services that are provided at nominal charges (e.g., $2.00 or $3.00) to be offered without the preamble message requirement discussed above. In addition, this provision permits frequent callers to avoid listening to the preamble message by utilizing a "bypass mechanism" to advance immediately into the program. The ability to bypass this preamble message would be available only for frequent callers; first time callers would not be able to bypass the preamble message.

Where audiotext services have been found to have violated any Federal, State, or local consumer protection law, or to have violated this subsection, section 227(b)(6) requires that the FCC's regulations ensure that common carriers and other parties provide appropriate refund to consumers who have been billed for such services.

Section 227(b)(7) requires the FCC to submit to the Congress recommendations for "data pay per call" services within one year after the date of enactment. One example of such a service is the transmission of information via facsimile machine, with charges billed on a per call basis for such transmission. The Committee anticipates that such data services may become a growing industry and therefore requests the Commission to submit its recommendations for legislative consideration.

Section 227(c) stipulates that Federal, State, and local election, consumer protection, and unfair trade laws are not preempted by this legislation. Nothing contained in H.R. 3490 precludes any State from enforcing its statutes and regulations with regard to lotteries, wagering, betting, and other gambling activities.

In addition, under section 227(c)(4), this legislation does not prevent a State from enacting and enforcing complementary oversight and regulatory systems or procedures, or both, so long as such systems and procedures do not significantly impede the enforcement of this section or other Federal statutes. The Committee found that the lack of nationally uniform guidelines led to confusion for consumers, audiotext providers, and common carriers, particularly as States individually addressed concerns with the abusive practices of pay-per-call businesses. States are not precluded from enacting and enforcing additional provisions to deal with intrastate audiotext services.

Section 227(c)(5) prohibits any cause of action from being brought in any court or administrative agency against any common carrier or its affiliates that terminates any audiotext service in order to comply with the regulations prescribed under section 227(b), providing that the carrier acts in good faith.

Section 227(d) contains the definitions of terms used in Title I.

Nothing in this Act or the amendments made by this Act shall be construed to relieve any person or entity of its obligations under section 223 of the Communications Act of 1934 (47 U.S.C. 223).

Title II—FTC Provisions

Section 201(a)(1) requires the FTC to prescribe rules for the advertisement of goods or services sold through pay-per-call transactions. These rules will include requirements for:

(A) the disclosure of the cost of such call, including the rate per minute and, if applicable, for the duration of the call;

(B) odds disclosure for any advertisement for lotteries and contests;

(C) in the case of individuals under the age of 18, a clear statement that parental consent is required; and

(D) a prohibition of any advertisements that emit electronic tones that can automatically dial a pay-per-call number.

The Committee expects the FTC to be guided by its previous rulemaking on games of chance in the food retailing and gasoline industries (16 CFR Part 419).

The Committee does not intend for the publisher of an advertisement for any 900 number (such as a magazine or telephone yellow pages publisher) to have any liability if the person offering such services or products in any way changes its prices subsequent to the publication of that advertisement.

The Committee does not intend that all advertising be required to include parental consent warnings. Rather, the FTC should focus this requirement on situations where advertising appears to be directed at persons under 18, as the Committee feels that those under 18 should not place a 900 number call—which triggers a contractual obligation—without parental consent. Advertisements may be considered aimed at persons under the age of 18 if the advertisement itself is of a nature that makes it reasonable to assume that it is targeted mainly if not exclusively toward children or teenagers, or if the advertisement is for a good or service of a general nature (such as sports scores, horoscopes, subscriptions to car magazines, etc.) and is disseminated in a manner that makes it reasonable to assume that the audience would be children or teenagers. This could include advertisements in youth-oriented magazines, on Saturday-morning or mid-afternoon weekday television shows, "pop" radio stations, or other comparable placements.

Section 201(a)(2) requires the FTC to prescribe a rule requiring common carriers to make available to the FTC information they maintain relating to their business arrangements with any pay-per-call vendor. The Committee expects the FTC to have a need for information about a pay-per-call vendor before requesting such information from a telephone common carrier.

Section 201(b) requires the FTC to complete its rulemaking within 270 days after the date of enactment of this Act.

Section 201(c) stipulates that any violation of a rule issued under subsection (a) shall be treated as a violation of a rule issued under section 5 of the Federal Trade Commission Act (FTC Act).

Section 202(a) permits a State attorney general to bring a civil action in a federal district court on behalf of its residents to enforce compliance with the FTC rules issued under section 201(a)(1).

Section 202(b) requires that, in any such case, the State attorney general will serve prior written notice of its action on the FTC. If it is not feasible for a State to provide such prior notice, notice must be served immediately upon instituting the action. The FTC has the right to intervene in such action, to be heard on all matters raised in such action, and to file petitions for appeal.

Section 202(c) states that nothing in this Act shall prevent an attorney general from exercising the powers conferred on the attorney general by the laws of the State.

Section 202(d) states that if the FTC has instituted a civil action for violation of its rules, an attorney general may not bring an action against the same defendant for the same rule violation during the pendency of such action.

Section 202(e)(1) provides that nothing in this section shall prohibit authorized state officials from proceeding in State courts on the basis of alleged violations of any general civil or criminal statute of such State.

Section 202(e)(2) provides that other officers of a State who are authorized to protect consumers and who are designated by the FTC to bring actions under section 202(a) may bring such an action against persons that the FTC has determined have or engaged in a pattern or practice of telemarketing which violates a rule of the FTC under section 201.

Section 203(a) states that, except as otherwise provided in section 202, this title shall be enforced by the FTC under the FTC Act.

Section 203(b) provides that the FTC shall enforce this title and bring actions against persons violating this title in the same manner and by the same means as though all applicable terms and provisions of the FTC Act were made part of this title. Anyone violating FTC rules shall be subject to the penalties, and entitled to the privileges and immunities, provided in the FTC Act.

Section 204 contains the definitions of terms used in Title II.

TITLE III—BILLING AND COLLECTION PROVISIONS

Section 301(a) provides that a consumer may question a pay-per-call charge and initiate a billing review by sending a written notice within 30 days after receipt of the billing statement to his or her billing (local exchange) carrier. The notice must:

(1) identify the customer by name and telephone number;

(2) indicate the customer's claim that a billing error exists; and

(3) detail (to the extent applicable) the customer's complaint.

Section 301(b)(1) provides that a billing carrier must, when it receives a written consumer notice, transmit the notice to the providing carrier who services the vendor in question.

Section 301(b)(2) states that providing carrier must:

(A) within 30 days send written acknowledgment of receipt of the complaint to the customer and include the name, address, and business telephone of the vendor subject to the notice, and

(B) within no later than 90 days after receipt of the notice either make appropriate corrections in the consumer's account or, after appropriate investigation, send a written explanation to the consumer stating the reasons the providing carrier believes the charge to be appropriate.

Section 301(b)(3) provides that when a consumer claims that a good or service has not been delivered, a providing carrier must investigate with reasonable diligence and provide the customer with a written statement of the results of the investigation. Because of the contractual relationship that a carrier has with the vendor or the service bureau that provides interconnection for that vendor, the Committee expects that the providing carrier will have a statistical record of whether there have been previous consumer complaints and chargebacks against a vendor and will make that record available (in the aggregate) to the consumer. If the vendor in question is unable or unwilling to provide documentation of a delivery, the written statement to the consumer from the providing carrier must so state.

Section 301(b)(4) limits the responsibility of providing carriers to compliance with the provisions of this section.

Section 301(b)(5) provides that a billing carrier may remove a charge from a consumer's account upon receipt of a written or verbal inquiry from the consumer if the billing carrier:

(A) informs the providing carrier that the charge has been removed;

(B) informs the consumer that removal of the charge does not limit consumer liability; and

(C) informs the customer that, to assure the protections of this title, a consumer must send a written notice in accordance with section 301(a).

Section 301(c)(1) states that the limitations on collection actions during the dispute resolution process provided by this title do not include the mailing of normal monthly bills that may include late charges on amounts in dispute.

Section 301(c)(2) stipulates that nothing in this section shall prevent any action by a vendor or carrier to collect an amount due when that amount has not been subject to a billing inquiry by a customer.

Section 301(d) provides that the failure to comply with this section or section 302 by a billing or providing carrier will result in the forfeiture of rights to collect the amount in question from the consumer. However, even though a billing or providing carrier may forfeit its right to collect from the customer, it may remain contractually liable to the vendor for the amout that would have been collectible but for the forfeiture.

Section 302(a) provides that, upon the initiation of a billing review, no vendor, carrier, or agent may threaten to make an adverse report to any person regarding a consumer because of failure to pay the amount in dispute until 20 days have passed after the requirements of section 301 have been met.

Section 302(b) states that if a consumer continues to dispute a charge through a further written notice to a carrier, the amount in dispute must be so noticed in any report to a third party.

Section 302(c) requires that a vendor, carrier, or agent must notify any third party it has previously notified of an amount in arrears if there is a subsequent resolution of the dispute.

Section 303 requires a vendor to transmit promptly to a billing carrier a credit statement upon forgiveness of a debit.

Section 304 limits a billing carrier's liability to no more than the amount billed in any pay-per-call transaction.

Section 305(a) states that this title does not supersede State laws except to the extent that those laws are inconsistent with any provision of this title, and only to the extent of the inconsistency if such laws provide less consumer protection than this title.

Section 305(b) provides limited authority to the FTC to exempt certain classes of transactions from the requirements of this title.

Section 306 provides that all the functions and powers of the FTC available under the FTC Act are available to enforce this title.

Section 307 requires the FTC to conduct a study and report to Congress within 18 months after enactment on the need for additional provisions to prevent evasions of the requirements of this title through the use of alternative billing procedures.

Section 308 contains the definitions of terms used in this title. For the purposes of this title, the phrase "local exchange telephone services or interexchange telephone services" includes services that have been traditionally offered by an exchange telephone company, including, where applicable, printed yellow pages directory advertising services and inside wiring services.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

COMMUNICATIONS ACT OF 1934

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TITLE II—COMMON CARRIERS

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SEC. 227. REGULATION OF AUDIOTEXT SERVICES.

(a) PURPOSE.—It is the purpose of this section—

(1) to put into effect a system of national regulation and review that will oversee the audiotext business;

(2) to give the Commission authority to prescribe regulations and enforcement procedures and conduct oversight to afford reasonable protection to consumers and to assure that violations of this Act do not occur.

(b) AUTHORITY FOR REGULATIONS.—

(1) IN GENERAL.—The Commission shall, within 270 days after the date of enactment of this section, complete a rulemaking proceeding to establish a system for oversight and regulation of audiotext services in order to provide for the protection of consumers and providers in accordance with this Act and other applicable Federal statutes and regulations. The Commission's final rules shall—

(A) include measures that provide a consumer of audiotext services with adequate and clear descriptions of the rights of the caller;

(B) define the obligations of common carriers with respect to the provision of the audiotext services;

(C) include requirements on such carriers to protect against abusive practices by providers of audiotext services;

(D) prohibit customers from being disconnected from local exchange services for refusal to pay for audiotext services; and

(E) identify procedures by which common carriers and providers of audiotext services may take affirmative steps to protect against nonpayment of legitimate charges.

(2) MINIMUM STANDARDS FOR PROVIDERS OF AUDIOTEXT SERVICES.—The regulations required by paragraph (1) shall prohibit any common carrier from offering audiotext services of any provider of such services who fails—

(A) to include in each audiotext message an introductory disclosure message that (i) describes the service being provided, (ii) specifies clearly and at a reasonably understandable volume the total cost or the cost per minute and any

other fees for that service, and for any other audiotext service to which the caller may be transferred, (iii) informs the caller of the option to hang up at the end of the introductory message without incurring any charge, and (iv) informs the caller that parental consent is required for calls made by children;

(B) to disable any bypass mechanism which allows frequent callers to avoid listening to the disclosure message described in subparagraph (A) after the institution of any price increase and for a period of time sufficient to give such frequent callers adequate and sufficient notice of the price change;

(C) to stop the assessment of time-based charges immediately upon disconnection by the caller;

(D) to include an appropriate and clear signal, at intervals determined by the Commission, where technically feasible, during live interactive group programs, to alert callers to the passage of time, and explain this signal in the disclosure required by subparagraph (A) for such programs, except that the requirements of this subparagraph do not apply to programs for which the caller is required to preregister or presubscribe; and

(E) to comply with such additional standards as the Commission may prescribe to prevent abusive practices.

(3) COMMON CARRIER OBLIGATIONS.—The regulations required by paragraph (1) shall require that any common carriers offering audiotext services shall—

(A) require, pursuant to contract or tariff, that a provider of audiotext services comply with the regulations issued pursuant to paragraph (2), and terminate, in accordance with procedures specified in such regulations, the offering of an audiotext service of a provider if such service is not provided in compliance with such regulations;

(B) ensure that a caller is not billed—

(i) with respect to audiotext services provided in violation of the regulations issued pursuant to paragraph (2); or

(ii) under such other circumstances as the Commission determines necessary in order to protect callers from abusive practices;

(C) establish a local or a toll-free telephone number to answer questions and provide information on callers' rights and obligations with regard to their use of audiotext services and to provide to callers the name and mailing address of any provider of audiotext services offered by the common carrier;

(D) within 60 days after the issuance of final regulations pursuant to paragraph (1), provide, either directly or through contract with any local exchange carrier that provides billing or collection services to the common carrier, to all of such common carrier's telephone subscribers, to all new subscribers, and to all subscribers requesting service at a new location, a disclosure statement that—

(i) sets forth in clear, standard English, or other languages as specified by regulation, all rights and obligations held by the subscriber and the carrier with respect to the use and payment of audiotext services;

(ii) describes any nonpayment option prescribed by the Commission under subparagraph (B) and the applicable blocking option; and

(iii) provides an explanation of live interactive programming;

(E) ensures that charges for audiotext services are stated separately on the bill from the sections relating to local and long distance telephone charges and that such statement includes the toll-free telephone number specified in subparagraph (C);

(F) notify in writing the State regulatory commission of any State within which the carrier intends to offer audiotext services of such intention, which notification shall include a description of the service to be provided to telephone users within that State as well as a list of the carrier's policies and procedures;

(G) subsequently make available to the State regulatory commission, upon request, a list of audiotext telephone numbers accessible by callers within that State through such carrier, which list shall include the name, business address, and business telephone number of the audiotext provider; and

(H) obtain from any provider of audiotext services that solicits charitable contributions proof of the tax exempt status of any person or organization for which contributions are solicited.

(4) BLOCKING REQUIREMENTS.—The regulations required by paragraph (1) shall require that any local exchange carrier carrying audiotext services shall offer callers the option of blocking access to all audiotext services from their telephone, whenever technologically feasible. Such regulation may permit the costs of such blocking to be recovered by contract or tariff, but such costs may not be recovered from local or long distance ratepayers. Such option shall be offered at no charge to the caller for a reasonable and appropriate period (established by the Commission in such regulations) after (A) the effective date of such regulation, (B) an initial connection, or (C) subscription for any new telephone line.

(5) EXEMPTIONS FROM INTRODUCTORY MESSAGE REQUIREMENTS.—The regulations prescribed by the Commission pursuant to paragraph (2)(A) may exempt from the requirements of such paragraph—

(A) calls from frequent callers or regular subscribers using a bypass mechanism to avoid listening to the disclosure message required by such regulations; or

(B) audiotext services provided at nominal charges, as defined by the Commission in such regulations.

(6) CONSUMER REFUND REQUIREMENTS.—The regulations required by paragraph (1) shall establish procedures, consistent with the provisions of titles II and III of the Telephone Disclo-

sure and Dispute Resolution Act, to ensure that carriers offering audiotext services and other parties provide appropriate refunds to callers who have been billed for audiotext services pursuant to programs that have been found to have violated this subsection or such regulations or any other Federal, State, or local consumer protection law.

(7) RECOMMENDATIONS ON DATA PAY-PER-CALL.—The Commission, within one year after the date of enactment of this section, shall submit to the Congress the Commission's recommendations with respect to the extension of regulations under this section to services that provide, for a per call charge, data services that are not audiotext services.

(c) EFFECT ON OTHER LAW.—

(1) NO PREEMPTION OF ELECTION LAW.—Nothing in this section shall relieve any information provider, common carrier, local exchange carrier, or any other person from the obligation to comply with Federal, State, and local election laws and regulations.

(2) CONSUMER PROTECTION LAWS.—Nothing in this section shall relieve any provider of audiotext services, common carrier, local exchange carrier, or any other person from the obligation to comply with Federal, State, or local laws relating to consumer protection or unfair trade.

(3) GAMBLING LAWS.—Nothing in this section shall preclude any State from enforcing its statutes and regulations with regard to lotteries, wagering, betting, and other gambling activities.

(4) STATE AUTHORITY.—Nothing in this section shall preclude any State from enacting and enforcing additional and complementary oversight and regulatory systems or procedures, or both, so long as such systems and procedures do not significantly impede the enforcement of this section or other Federal statutes.

(5) LIABILITY.—No cause of action may be brought in any court or administrative agency against any common carrier or any of its affiliates on account of any act of the carrier or affiliate, and which the carrier or affiliate shows to be in good faith, to terminate any audiotext service in order to comply with the regulations prescribed under subsection (b).

(d) DEFINITIONS.—For purposes of this section—

(1) The term "audiotext services" means any service—

(A) in which any person provides, through interstate telecommunications—

(i) audio information or audio entertainment produced or packaged by such person; or

(ii) access to simultaneous voice conversation services;

(B) for which the caller pays a per-call or per-time-interval charge that is greater than, or in addition to, the charge for transmission of the call; and

(C) the charge for which is billed and collected by a common carrier or local exchange carrier.

Such term does not include directory services provided by a common carrier or its affiliate or by a local exchange carrier or its affiliate or any service the charge for which is tariffed.

(2) A common carrier "offers audiotext services" by transmitting an audiotext service through interstate communications. A local exchange carrier shall not be considered to "offer audiotext services" if the local exchange carrier only provides exchange access services or billing services, or both, to a common carrier in connection with the common carrier's offering of audiotext services.

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